

\*E-Filed 7/1/14\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMES HARVEY, aka ABDUL SHAKUR,

No. C 12-5223 RS (PR)

Plaintiff,

**ORDER SETTING BRIEFING  
SCHEDULE**

v.

WARDEN LEWIS, et al.,

Defendants.

Defendants' motion to dismiss this federal civil rights action on grounds that plaintiff failed to exhaust his administrative remedies (Docket No. 31) is DENIED without prejudice. Defendants are directed to renew their arguments in support of dismissal by way of a motion for summary judgment, in light of the Ninth Circuit's recent ruling in *Albino v. Baca*, No. 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc). Such motion, which can raise both procedural and substantive issues and defenses, shall be filed on or before October 1, 2014. Plaintiff's opposition, if any, shall be filed within 45 days after defendants' motion is filed. Defendants' reply, if any, shall be filed within 15 days after the opposition, if any, is filed. All parties shall continue to comply with the standards and notice provisions set forth in the order of service. Discovery remains stayed. (Docket No. 35.)

Because this order addresses the concerns raised in defendants' recently filed motion to convert their prior motion into a motion for summary judgment (Docket No. 41), that motion is DENIED as moot. The Clerk shall terminate Docket Nos. 31 and 41.

**IT IS SO ORDERED.**

DATED: July 1, 2014

  
RICHARD SEEBORG  
United States District Judge

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